ORDR

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FILED
9/29/2005
Clerk of the Court

DISTRICT COURT
FAMILY DIVISION

CLARK COUNTY, NEVADA

CHARLES FRANK GIAMPA, Plaintiff/Counterdefendant,	)	
v.	)	CASE NO. 98D224029
	)	DEPT. NO. B
VICTORIA MARGARET LUGO-GIAMPA,	)	
Defendant/Counterclaimant.	)	

FINDINGS OF FACT AND ORDERS

This matter came on for an evidentiary hearing before the above-entitled Court on Plaintiff's Motion to Modify Custody and Resolve Parent-Child Issues (filed herein on January 20, 2005). This matter also came on for a hearing on the following motions and countermotions filed with the Court since April 26, 2005:

(1) Defendant's Amended Notice of Emergency Appeal on Issues of the Best Interests of the Children; (filed on May 25, 2005);

(2) Plaintiff's Motion to Modify Custody and Resolve Parent-Child Issues; Motion for Order to Show Cause and Related Relief (filed on July 19, 2005;

(3) Defendant's Response and Countermotion to Plaintiff's Motion to Modify Custody and Resolve Parent/Child Issues; Motion for Order to Show Cause and Related Relief (filed on August 3, 2005);

(4) Defendant's Motion for Willful and Deliberate Contempt and for Imposition of Sanctions (filed on August 18, 2005); and

(5) Plaintiff's Opposition to Defendant's Countermotion to Plaintiff's Motion to Modify Custody and Resolve Parent/Child Issues; Motion for Order to Show Cause and Related Relief; Plaintiff's Opposition to Defendant's Motion for Willful and Deliberate Contempt and for Imposition of Sanctions; and Plaintiff's Countermotion for Protective Order and for the Imposition of Sanctions Against Defendant (filed on August 23, 20050.

Plaintiff appeared in person and by and through his attorney, BRYCE C. DUCKWORTH, ESQ., of the law firm of SMITH, LARSEN & WIXOM, and Defendant appeared in proper person. The Court, having read the pleadings and papers on file herein, having heard oral argument of counsel and the parties, and good cause therefore, makes the following Findings:

1. This matter originally was set for evidentiary proceedings to consider Plaintiff's request to modify custody relating to the parties' son, Mark Christopher Giampa ("Mark"), born August 15, 1989. Since the time the evidentiary hearing was set, both parties have filed motions with the Court, including a motion filed by Plaintiff to modify custody relating to the parties' daughter, Sarah Elizabeth Giampa ("Sarah"), born December 11, 1987. At this time, the Court has no child interview relating to the parties' daughter, and the evaluation previously ordered by the Court has not been completed. Further, according to the evaluator, the Defendant did not participate in the evaluation.

2. It appears that Dr. Lyons no longer is available to complete the evaluation previously started. Plaintiff had paid the sum and amount of $2,500 towards the cost of the evaluation. A different evaluator is necessary to complete the evaluation. Dr. Louis Mortillaro is the only psychological expert who has appeared o the approved lists of both parties. Thus, Dr. Mortillaro is appointed to replace Dr. Lyons for purposes of providing an evaluation.

3. Plaintiff is current in his financial obligations to the Defendant through July 2005 (with payment received in the sum of $10,500).

4. There is no pending motion regarding the children's attendance at school. The parties agreed in April 2005 to enroll Mark in a Christian school. The parties should request that Dr. Mortillaro expedite his evaluation of the school issues to assist the parties in resolving this issue.

Based on the foregoing Findings, the Court enters the following Orders:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the parties are referred to Dr. Mortillaro for purposes of an evaluation of Plaintiff, Defendant, the parties' children and Plaintiff's spouse. IT IS FURTHER ORDERED that each party shall appear for an evaluation with Dr. Mortillaro, and both children shall be included as part of the evaluation. IT IS FURTHER ORDERED that Dr. Mortillaro may make recommendations regarding custody, visitation, and school attendance relating to the parties' children. IT IS FURTHER ORDERED that Defendant may provide Dr. Mortillaro with copies of the counselor's reports. IT IS FURTHER ORDERED that the parties are to contact Dr. Mortillaro immediately to set-up their appointments. IT IS FURTHER ORDERED that, based upon the offer of the Plaintiff, the Plaintiff shall front the costs associated with the evaluation. IT IS FURTHER ORDERED that, if Defendant fails to participate in the evaluation, the Court will issue a decision on the evidence available at the next date (even if the evaluation is one sided due to lack of participation by Defendant). In this regard, the evaluation will come into evidence at the time of the hearing. As such, IT IS FURTHER ORDERED that both parties participate in the evaluation.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that child custody shall be modified temporarily for purposes of stability, with the parties maintaining joint legal custody and shared physical custody, with Plaintiff maintaining primary physical custody, subject to the conditions set forth below.

IT IS FURTHER ORDERED that Defendant's time with the children shall include the first, second and fourth weekends of each month, from after school Friday until Sunday at 7:30 p.m. During the third and fifth weeks when Defendant does not have time during the upcoming weekend, Defendant shall have the children on Monday and Wednesday from 3:30 p.m. until 8:30 p.m. on each such day. IT IS FURTHER ORDERED that the parties shall take into account the children's activities and schools. IT IS FURTHER ORDERED that Plaintiff is to encourage contact between the children and the Defendant. IT IS FURTHER ORDERED that the Court reserves Defendant's right to request compensatory time pending the outcome of the evaluation and the evidentiary hearing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall not leave the children unsupervised overnight, or for a period of time in excess of a couple of hours.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall immediately take the steps necessary to seek to have the parties' son enrolled at Trinity Christian Schools.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's total monthly child support shall be reduced temporarily to a total of $500 per month.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion for Protective Order and to Quash is granted in part. IT IS FURTHER ORDERED

that the telephone records Defendant has sought by way of Subpoena shall be directed to the Court for in camera inspection. In this regard, Defendant shall modify the Subpoenas to seek telephone records from May 7 2005 through August 24, 2005, and pursuant to the instructions set forth herein. IT IS FURTHER ORDERED that all information from such telephone records shall be redacted, save and except those telephone calls between the numbers specified in court (including Plaintiff's cellular telephone number, Plaintiff's apartment land line, Sarah's cellular telephone number, and Mark's cellular telephone number), as well as Plaintiff's home telephone number which was disclosed to the Court. Any information pertaining to calls to or from other telephone numbers not listed shall be redacted. IT IS FURTHER ORDERED that Defendant shall contact the entities subpoenaed to direct them to produce such records to the Court directly. IT IS FURTHER ORDERED that only the redacted information shall be provided by the Court to the litigants. IT IS FURTHER ORDERED that the Subpoena relating to surveillance tapes from Country Club Towers, as well as the financial documents requested from Country Club Towers, shall be quashed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter is set for a return hearing on January 18, 2006, at 1:30 p.m.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this matter is continued for the evaluation return and evidentiary hearing.

DATED this 23 day of September, 2005.

GLORIA S. SANCHEZ
DISTRICT JUDGE

Submitted by:
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